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Federal Communications Commission
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FCC SEEKS COMMENT ON PROGRAMMATIC AGREEMENT INTENDED TO STREAMLINE THE REVIEW PROCESS FOR COMMUNICATION FACILITIES UNDER THE NATIONAL HISTORIC PRESERVATION ACT

Washington, D.C. –The Commission has adopted a Notice of Proposed Rulemaking (NPRM) seeking public comment on a draft Nationwide Programmatic Agreement to be executed by the Commission, the Advisory Council on Historic Preservation (Council), and the National Conference of State Historic Preservation Officers (Conference). The NPRM also seeks comment on a proposed amendment to the Commission’s rules to incorporate the requirements set forth in the Nationwide Agreement. The purpose of the proposed Nationwide Agreement is to improve and streamline the Section 106 National Historic Preservation Act (NHPA) review process for tower constructions and certain other Commission undertakings.

Background:

Under Section 106 of the NHPA, federal agencies are required to consider effects of federal undertakings on historic properties. Because the Section 106 process as applied to thousands of communications towers and antennas is often unnecessarily burdensome and complex for all parties, a working group of representatives of the Commission, Council, Conference, American Indian tribes, the communications industry, and historic preservation consultants was formed to consider solutions. In March 2001, the Commission, Council and Conference signed an initial Programmatic Agreement that excluded most collocations of antennas on existing structures from routine historic preservation review. The Working Group has now completed a draft Nationwide Agreement that would establish further exclusions and prescribe standards and procedures for communications towers and for collocations that are not excluded under the Collocation Programmatic Agreement.

Specifics of the NPRM:

The NPRM seeks comment on the provisions of the draft Nationwide Agreement, which include, among other things:

- Two alternative sets of provisions, one developed by the Working Group and one proposed by United South and Eastern Tribes, Inc., regarding how licensees, tower constructors and their consultants should engage tribes and Native Hawaiian organizations and the Commission’s obligation to consult on a government-to-government basis with federally-recognized tribes.
- Procedures for ensuring compliance with NHPA’s public participation requirements.

- Methods for establishing the area of potential effects, identifying and evaluating historic sites, and assessing effects.
- Procedures for submitting projects to the State Historic Preservation Officer and resolution by the Commission.
- Forms designed to facilitate the filing of uniform documentation with the State Historic Preservation Officer.
- Exclusion of certain undertakings from the Section 106 process because such undertakings are unlikely to affect historic properties.

In addition to seeking public comment, the Commission intends further actions to seek direct tribal input and consultation, including appearances at appropriate forums. American Indian Tribes (including Alaska Native Villages) and Native Hawaiian Organizations are encouraged both to provide written comments and to participate in the consultation process.

Action by the Commission, May 27, 2003, by Notice of Proposed Rule Making (FCC 03-125), Chairman Powell, Commissioners Abernathy, Copps, Adelstein and Martin with Chairman Powell issuing a separate statement.

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